

REMARKS/ARGUMENTS

Claims 1-57 are pending, claims 1 and 53 being independent. By the amendment above, claims 1, 4, 19, 41, 50 and 53 have been amended, and claims 30-33, and 36-40 have been cancelled. No new matter has been added.

In the pending Office Action, the Examiner objected to the Drawings on the grounds that a legend is not necessary when the drawing consists of a single figure. By the amendment above, the applicant has proposed deleting the legend "Fig. 1" from the Drawings. A proposed replacement Drawing is also attached. Withdrawal of this objection, and acceptance of the proposed replacement sheet is therefore respectfully requested. The specification has also been amended to reflect the deletion of the legend from the Drawing.

The Examiner then objected to the Abstract as exceeding 150 words. By the Amendment above, the Abstract has been amended to 150 words. Accordingly, withdrawal of this objection is also respectfully requested.

The Examiner objected to claim 53 due to a typographical error in line 4 thereof. The error has been corrected, and withdrawal of this objection is solicited. This amendment is believed to be merely cosmetic in nature and does not affect the scope of the claims.

The Examiner rejected claims 1, 4 and 53 under 35 U.S.C. § 112, 2d ¶, as indefinite for use of the terms "more competitively" and "more aggressively". The objected-to language has been deleted from the claims to remove any potential for ambiguity.

The Examiner went on to reject claim 19 under 35 U.S.C. § 112, 2d ¶, because the term "said bids" was considered indefinite. By the amendment above, this term has been clarified.

Next, the Examiner rejected claim 50 under 35 U.S.C. § 112, 2d ¶, as indefinite for reference to "a bidder". This term has been amended to clarify its meaning.

Finally, the Examiner rejected claims 53-57 under 35 U.S.C. § 112, 2d ¶, as indefinite for referring to a “system” and requested clarification of whether this referred to a method or an apparatus. The applicant intends to claim an apparatus with those claims.

All of the Examiner’s bases for rejections under 35 U.S.C. § 112, 2d ¶ having been addressed, it is respectfully requested that this rejection be withdrawn.

The Examiner then rejected claims 1-57 under 35 U.S.C. § 102(b) as anticipated by United States Patent No. 3,581,072 (Nymeyer). The Examiner indicated, however, that claims 5-7, 21-24 and 41-44 would be allowable if re-written to overcome the rejections under 35 U.S.C. § 112, 2d ¶, and to include all of the limitations of the base claim and any intervening claims.

The invention is directed to a method and apparatus for conducting auctions. The inventive method encourages bidders to bid aggressively and early by rewarding bidders who bid high and early. That reward is to be named the “auction leader” who is then accorded a tangible benefit: being allowed to make a post-auction bid, *i.e.*, the “auction leader” is allowed to place a final bid after all other bidding is closed, placing the “auction leader” in position to guarantee his or her purchase of the item being auctioned. It is contemplated that the auction leader may not be the highest bidder at the scheduled close of the auction. In fact, the inventive method is established to reward the auction leader who is *not* the final highest bidder. Rather the “auction leader” is the bidder who submits more bids and higher bids during the course of the auction, but is outbid at the last moment by a “sleeper” bidder, who lurks until the last possible moment before placing a bid, which would then be lower than the bid otherwise necessary to win the auction if all bidders had bid fairly and early. Thus, the inventive method and system provide a means for ensuring that more bids are placed, and higher bids are placed.

This method is especially useful in on-line auctions of unique, or otherwise unusual items, where bidders want to acquire a *specific* item and losing the auction means that bidders are foreclosed from acquiring the auctioned item. It is less useful in relation to auctions for widely available and fungible items, such as stock or commodities, because the bidder does not usually want to acquire a *specific* share of stock or a *specific* commodity future. The purchaser of stock wants *any* share or commodity at his or her price. The dynamics of this form of auction are quite different with different concerns.

The auction method described in Nymeyer is directed to conducting “commodity exchanges, stock exchanges, and similar auction markets” (col. 1, lines 5-7). Nymeyer does not teach the naming of an “auction leader”, other than by having the final highest bid, nor the rewarding of any bidder other than the final highest bidder, by awarding that other bidder the item being auctioned. In fact, permitting any reward other than being allowed to purchase the item being auctioned at the highest bid price would be impossible under the teachings of Nymeyer. Since Nymeyer is concerned with conducting stock exchanges and the like, it would likely be a violation of securities law to reward a bidder for such an item (*e.g.*, stock or commodities futures) who was *not* the final highest bidder, or to provide that bidder with any incentive other than an award of the stock at the highest price.

Thus, Nymeyer does not disclose all of the elements of the invention as claimed, and so does not anticipate the claimed invention. Furthermore, since Nymeyer neither teaches nor suggests this limitation of the claims, the invention as claimed is patentably distinct therefrom, and the rejection based on Nymeyer should be withdrawn.


It is noted that the remaining art was cited but not applied, and so is deemed less pertinent to the invention as claimed than Nymeyer. Accordingly, all grounds for objection and/or

rejection having been addressed, and there being no other basis for refusing to allow the application, early and favorable action is respectfully solicited.

It is believed that no fees or charges are required at this time in connection with the present application; however, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,

COHEN, PONTANI, LIEBERMAN & PAVANE

By 
Roger S. Thompson
Reg. No. 29,594
551 Fifth Avenue, Suite 1210
New York, New York 10176
(212) 687-2770

Dated: January 30, 2004

~~FIG. 1~~

